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LOS ANGELES

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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 DAVID L. DEFREES,
13 SIMON GERSHON and
14 FREDERICK RICH, in the right of and
for the benefit of U.S. Aerospace, Inc.

15 Plaintiffs,

16 v.

17 JOHN C. KIRKLAND,
18 LUCE, FORWARD, HAMILTON &
19 SCRIPPS LLP,
20 MICHAEL C. CABRAL,
21 JERROLD S. PRESSMAN,
22 KENNETH J. KOOCK,
23 MICHAEL L. GOLDBERG,
24 JAMES D. HENDERSON,
CHARLES S. ARNOLD,
TUSA ACQUISITION CORPORATION,
AMERICAN DEFENSE
INVESTMENTS, LLC and
DOES 1 through 10,

25 Defendants,

26 and

27 U.S. AEROSPACE, INC.

28 Nominal Defendant.

CV11 04272

GAF(SR)

VERIFIED DERIVATIVE
COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs David Defrees, Simon Gershon and Frederick Rich ("Plaintiffs"), by
2 and through their attorneys, derivatively on behalf of U.S. Aerospace, Inc. ("USAE"
3 or the "Company"), allege upon personal knowledge as to themselves and their own
4 acts, and upon information and belief as to all other matters, based upon, *inter alia*,
5 the investigation conducted by and through their attorneys, which included, among
6 other things, a review of Company filings with the Securities and Exchange
7 Commission ("SEC"), news reports, press releases, and other publicly available
8 documents regarding the Company and the Defendants, as follows:

9 **I. NATURE OF THE ACTION**

10 1. Plaintiffs, derivatively on behalf of Nominal Defendant USAE, seek
11 relief for the damages sustained and to be sustained by the Company for
12 wrongdoing committed between April 1, 2010 and the present (the "Relevant
13 Period") against:

- 14 a. John C. Kirkland ("Kirkland") and Luce, Forward, Hamilton &
15 Scripps LLP ("Luce") for breach of fiduciary duty, aiding and
16 abetting breach of fiduciary duty, legal malpractice and corporate
17 waste,
18 b. certain members of USAE's Board of Directors (the "Board"),
19 Michael C. Cabral ("Cabral"), Jerrold S. Pressman ("Pressman"),
20 Kenneth J. Koock ("Koock"), Michael L. Goldberg
21 ("Goldberg"), and James D. Henderson ("Henderson")
22 (collectively, the "Director Defendants"), for breach of fiduciary
23 duty, aiding and abetting breach of fiduciary duty and corporate
24 waste,
25 c. the holders of USAE's Series E Preferred Stock, TUSA
26 Acquisition Corp. ("TUSA") and American Defense
27 Investments, LLC ("ADI") (the "Majority Shareholder
28 Defendants"), for breach of fiduciary duty and/or aiding and

1 abetting breach of fiduciary duty; and

2 d. Charles S. Arnold ("Arnold") for aiding and abetting breach of
3 fiduciary duty.¹

4 2. By the acts alleged herein, Defendant Kirkland has violated numerous
5 provisions of the California Rules of Professional Conduct, ignored irreparable
6 conflicts between his client USAE and ADI, and subsumed his obligations to USAE
7 in favor of the interests of ADI and the other Series E preferred shareholders.

8 3. The Director Defendants, four of which were hand-picked by Majority
9 Shareholder Defendant ADI, breached their fiduciary duties and aided and abetted
10 Defendants Kirkland and Luce in their breaches of fiduciary duties by purporting to
11 ratify Kirkland's wrongful conduct to the detriment of the Company and committed
12 corporate waste by permitting the Company to issue millions of shares of Company
13 stock to the Majority Shareholders without meaningful consideration, and by
14 permitting millions of shares to be issued to purported "consultants", Omnicom
15 Holdings. Inc. ("Omnicom") and Summit Trading, without meaningful
16 consideration.

17 4. Moreover, the Majority Shareholder Defendants, ADI and TUSA,
18 which control a majority of the USAE Board, have breached and continue to breach
19 their fiduciary duties owed to the Company and the minority shareholders by
20 insisting that the Company be placed into bankruptcy rather than accept financing,
21 which could allow the Company to become profitable under the premise that the
22 Majority Shareholder Defendants could emerge from the proceedings owning a shell
23 company containing the necessary licenses to enter into government contracts and
24 other valuable Company assets.

25 5. Finally, Defendant Arnold has aided and abetted the aforementioned
26 breaches of fiduciary duty by Defendants Kirkland and Luce, the Director

27 ¹ Defendants Kirkland, Luce, Cabral, Pressman, Koock, Goldberg, Henderson,
28 TUSA and ADI are collectively referred to herein as the "Defendants."

1 Defendants and the Majority Shareholder Defendants by, among other things,
2 misrepresenting to the Company that he and Defendant Kirkland owned USAE debt
3 which was actually owed by another party. Defendant Arnold, along with
4 Defendant Kirkland, then directed the Company to expand the Board and to appoint
5 four of the Director Defendants to the USAE Board. The Director Defendants then
6 granted Arnold's company, Summit Trading, an option to purchase 5 million shares
7 of USAE for no consideration. Defendant Arnold also participated in engineering a
8 transaction which resulted in Defendants ADI and TUSA owning the majority of
9 USAE's voting shares. Defendant Arnold's wife is the President and shareholder of
10 TUSA. Finally, after Defendants Kirkland and Pressman engineered a sham
11 settlement with Omnicom whereby Omnicom was issued 15 million shares of
12 Company stock worth \$2.3 million without consideration to the Company,
13 Defendant Arnold directed his employees to re-issue 4.5 million of those shares to a
14 series of other entities.

15 II. JURISDICTION AND VENUE

16 6. This Court has jurisdiction over this action pursuant to 28 U.S.C.
17 §1332(a)(1) in that Plaintiffs and Defendants are citizens of different states and the
18 matter in controversy exceeds \$75,000, exclusive of interests and costs. This action
19 is not a collusive action designed to confer jurisdiction on a court of the United
20 States that it would not otherwise have.

21 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(a)
22 because a substantial portion of the events or omissions giving rise to the claims
23 alleged herein occurred within this Judicial District. Moreover, Defendants have
24 received substantial payments in this Judicial District by doing business here and
25 engaging in numerous activities that had an effect in this Judicial District.

26 III. PARTIES

27 A. The Plaintiffs

28 8. Plaintiff **David L. DeFrees** is a resident of Leavenworth, Kansas and

1 has owned at all times relevant to this action, and continues to own, the Company's
2 common stock.

3 9. Plaintiff **Simon Gershon** is a resident of Merrick, New York and has
4 owned at all times relevant to this action, and continues to own, the Company's
5 common stock.

6 10. Plaintiff **Frederick Rich** is a resident of Tomball, Texas and has
7 owned at all times relevant to this action, and continues to own, the Company's
8 common stock.

9 **B. The Nominal Defendant**

10 11. Nominal Defendant **U.S. Aerospace, Inc.** ("USAE" or the
11 "Company"), formerly known as New Century Companies, Inc. ("New Century"),
12 was incorporated in the state of Delaware on August 1, 1980 and is headquartered at
13 10291 Trademark Avenue, Rancho Cucamonga, California, County of San
14 Bernardino.

15 12. On October 9, 2009, New Century entered into a share exchange
16 agreement with Precision Aerostructures, Inc. ("PAI") pursuant to which the sole
17 shareholder of PAI, Defendant Cabral, agreed to transfer all capital stock of PAI to
18 New Century. USAE operates through PAI. USAE's common stock is quoted on
19 the Over-the-Counter Bulletin Board ("OTC Bulletin Board") under the symbol
20 "USAE". On or about April 19, 2010, the Company changed its name from New
21 Century Companies, Inc. to U.S. Aerospace, Inc.

22 13. USAE is an aerospace and defense contractor engaged in the
23 production of aircraft assemblies, structural components, and highly engineered,
24 precision machined details for the United States Department of Defense, United
25 States Air Force, Lockheed Martin Corporation, The Boeing Company, L-3
26 Communications Holdings, Inc., the Middle River Aircraft Systems subsidiary of
27 General Electric Company, and other aircraft manufacturers, aerospace companies,
28 and defense contractors. The Company supplies structural aircraft parts for military

1 aircraft such as the P-3 Orion, and wide-body commercial airliners such as the
2 Boeing 747.

3 **C. Defendants Kirkland and Luce, Forward, Hamilton & Scripps LLP**

4 14. Defendant **John C. Kirkland** is a resident of California, is an attorney
5 admitted to practice law in the state of California, is currently “Of Counsel” with
6 Defendant Luce and works from the firm’s Los Angeles office. From on or about
7 February 18, 2009 to March 5, 2011, Defendant Kirkland was a partner of
8 Defendant Luce. During the Relevant Time Period, Defendant Kirkland and his law
9 firm, Luce, served as outside legal counsel to USAE. Defendant Kirkland has been
10 a member of or associated with at least half a dozen law firms during his legal
11 career, including: (1) Defendant Luce; (2) Dreier Stein Kahan Browne Woods
12 George; (3) Lowenstein, Sandler LLP; (4) Greenberg Traurig, LLP, (5) Weissmann
13 Wolff Bergman Coleman Grodin & Evall LLP; and (6) Cadwalader Wickersham &
14 Taft LLP. He is also currently the Managing Director at Ironridge Global Partners.

15 15. While a partner at Greenberg Traurig LLP, Defendant Kirkland and the
16 firm were named in a \$50 million civil suit filed by a mail-order food marketing
17 company, GreatMeals, USA, Inc. (“GreatMeals”), against former boxing champion
18 George Foreman over a failed steak venture. The suit claimed that Kirkland
19 conspired with Foreman to transfer control of certain business opportunities to
20 Kirkland’s brother, Victor Kirkland. GreatMeals also alleged that the defendants
21 acted with fraud and malice in an attempt to put it out of business by interfering with
22 a valuable contract between GreatMeals and Home Shopping Network.

23 16. Defendant Kirkland joined Defendant Luce in 2009 after leaving Dreier
24 Stein Kahan Browne Woods George in Los Angeles, an affiliate of Dreier LLP that
25 broke up in January 2009 after Marc Dreier was charged with impersonating an in-
26 house lawyer at a Canadian pension fund. Dreier pleaded guilty to selling more than
27 \$700 million in fictitious real estate development notes and fake pension plan notes.
28 The elaborate four-year scheme, which netted roughly \$400 million, led to the

1 implosion of Dreier's 250-attorney firm, Dreier LLP, and its affiliates, including
2 Dreier Stein Kahan Browne Woods George. Defendant Kirkland was one of two
3 former partners from Dreier LLP subpoenaed by the firm's liquidating trustee in
4 May 2009. The Dreier bankruptcy trustee stated in court documents that he
5 suspected Kirkland may be essentially engaging in misappropriation and fraud. The
6 trustee stated: "With his new firm [Luce], Mr. Kirkland may even be directing
7 [former Dreier] clients to pay [Luce] instead of [Dreier]." In his efforts to marshal
8 assets for the estate, the bankruptcy trustee obtained a court order to examine
9 Kirkland under oath. The bankruptcy court also issued a subpoena to Luce's
10 managing partner, ordering the firm to produce documents relating to the Dreier
11 bankruptcy.

12 17. Defendant **Luce, Forward, Hamilton & Scripps LLP** ("Luce") is a
13 limited liability partnership doing business in California, with offices located in San
14 Diego, San Francisco, Los Angeles, Orange County, Carmel Valley and Rancho
15 Santa Fe.

16 18. Luce's firm website states: "Luce Forward's dynamic practice is home
17 to attorneys working in major business centers throughout California. We are
18 known as a top law firm throughout the state and represent clients from across the
19 country. For over 135 years, our mission and values have been our guide." Luce's
20 mission includes "[d]eliver[ing] dedicated service at a value that larger firms cannot
21 provide" and "[e]xceed[ing] the high expectations of sophisticated clients." Luce's
22 values include "[t]eamwork, loyalty, trust, communication and mutual support."

23 **D. The Director Defendants**

24 19. Defendant **Michael C. Cabral** is a resident of California and has been
25 a member of the USAE Board since April 5, 2010. He was appointed President of
26 USAE on August 23, 2010. Defendant Cabral founded and has served as President
27 of the Company's wholly-owned subsidiary, Precision Aerostructures, Inc., since
28 September 2006. In or about April 2010, Defendant Cabral received an option to

1 purchase 1 million shares of USAE stock.

2 20. Defendant **Jerrold S. Pressman** is a resident of California and has
3 been a member and Chairman of the USAE Board since April 5, 2010. The
4 principals of ADI directed Defendant Kirkland and Defendant Charles S. Arnold to
5 select Defendant Pressman as a Board member. Defendant Pressman was
6 Defendant Kirkland's client during all relevant times on unrelated matters. In or
7 about April 2010, Defendant Pressman received an option to purchase 1 million
8 shares of USAE stock.

9 21. Defendant **Kenneth J. Koock** is a resident of Florida and has been a
10 Director of USAE since April 5, 2010. The principals of ADI directed Defendants
11 Kirkland and Arnold to select Defendant Koock as a Board member. In or about
12 April 2010, Defendant Koock received an option to purchase 1 million shares of
13 USAE stock.

14 22. Defendant **Michael L. Goldberg** is a resident of Florida and has been a
15 Director of USAE since April 5, 2010. The principals of ADI directed Defendants
16 Kirkland and Arnold to select Defendant Goldberg as a Board member. In or about
17 April 2010, Defendant Goldberg received an option to purchase 1 million shares of
18 USAE stock.

19 23. Defendant **James D. Henderson** is a resident of California and has
20 been a Director of USAE since April 5, 2010. The principals of ADI directed
21 Defendants Kirkland and Arnold to select Defendant Henderson as a Board member.
22 In or about April 2010, Defendant Henderson received an option to purchase 1
23 million shares of USAE stock.

24 24. Defendants Cabral, Pressman, Koock, Goldberg, and Henderson are
25 sometimes collectively referred to herein as the "Director Defendants."

26 **E. Defendant Charles S. Arnold**

27 25. Defendant Charles S. Arnold is a resident of Florida and is a principal
28 of Summit Trading Limited. Defendant Arnold and Defendant TUSA share the

1 same address: 520 Brickell Key Drive, Suite 1607, Miami, Florida 33131.

2 26. Upon information and belief, Defendant Arnold has a pattern and
3 practice of entering into stock promotion contracts with penny stock companies in
4 return for a substantial amount of stock in the company. He, along with others,
5 publishes or promotes positive stories about those fledgling companies and is then
6 able to reap a windfall when the positive stories spur investors to drive these stock
7 prices higher.

8 27. On May 21, 2002, a federal grand jury returned an Indictment charging
9 Defendant Arnold and others with one count of wire, mail and securities fraud
10 conspiracy, in violation of 18 U.S.C. § 371, thirteen counts of wire fraud, in
11 violation of 18 U.S.C. §§ 1343 and 1346, one count of mail fraud, in violation of 18
12 U.S.C. §§ 1341 and 1346, and one count of securities fraud, in violation of 15
13 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Defendant Arnold was a stock promoter
14 and a controlling shareholder of a company named A1 International, Inc.
15 (“AWON”), the common stock of which was publicly traded on the over-the-
16 counter market. According to the Indictment, Defendant Arnold and others agreed
17 to pay an approximately \$2.5 million undisclosed kickback to a confidential
18 informant for the FBI and others to induce a fictitious foreign mutual fund to buy
19 approximately 4 million shares of overpriced AWON stock for a total of \$8 million.
20 Defendant Arnold, however, was ultimately acquitted.

21 **F. The Majority Shareholder Defendants**

22 28. **Defendant TUSA Acquisition Corp. (“TUSA”)** is a holder of
23 127,931 shares of USAE Series E Preferred Stock, each of which is convertible into
24 500 shares of USAE common stock. TUSA is incorporated in Delaware and its
25 principle place of business is located (with Defendant Arnold) at 520 Brickell Key
26 Drive, #1607, Miami, Florida 33131. TUSA’s President and stockholder is Daisy
27 Rodriguez, Defendant Arnold’s wife.

28 29. Defendant **American Defense Investments, LLC (“ADI”)** holds

1 255,862 shares of USAE Series E Preferred Stock, each of which is convertible into
2 500 shares of USAE common stock. ADI is incorporated in Delaware and its
3 principle place of business is located at 1301 South 75 Street, Suite 100, Omaha,
4 Nebraska. ADI's Managing Director is Rickard N. Berkshire of Berkshire &
5 Burmeister.

6 30. Defendants TUSA and ADI, by virtue of their conversion rights,
7 control a majority of the shares of USAE and elect its Board. Defendants TUSA
8 and ADI are sometimes referred to herein as the "Majority Shareholder
9 Defendants."

10 **G. The Doe Defendants**

11 31. Plaintiffs do not know the true names and capacities, whether
12 individual, corporate, associate, or otherwise of defendants Does 1 through 10,
13 inclusive. Plaintiffs are informed and believe and based upon such information and
14 belief allege that each fictitious defendant was in some way responsible for,
15 participated in, or contributed to the matter and things of which Plaintiffs complain
16 herein, and in some form and under some theory, is subject to liability therefore.
17 When the exact nature and identity of such fictitious defendants' responsibility for,
18 participation in, and contribution to the matters herein alleged is ascertained,
19 Plaintiffs will seek leave to amend this Complaint to set forth the same.

20 **IV. SUBSTANTIVE ALLEGATIONS**

21 32. In October 2009, when New Century Companies purchased PAI, New
22 Century's Board consisted of David Duquette, the President of the Company, and
23 Josef Czikmantori, the acting Secretary.

24 33. At the time, a New York-based asset management firm owned
25 approximately \$3.5 million of New Century's debt. Subsequent to New Century's
26 October 2009 purchase of PAI, Defendants Kirkland and Arnold acquired from the
27 New York-based asset management firm for approximately \$100,000 an option to
28 purchase its debt. Defendants Kirkland and Arnold then approached Mr. Duquette

1 and Mr. Czikmantori and threatened to foreclose on New Century's debt unless New
2 Century provided Defendants Kirkland and Arnold with a controlling number of
3 seats on its Board. Defendants Kirkland and Arnold based these threats, in part, on
4 the false pretense that they actually owned the debt.

5 34. As a result, on or about April 5, 2010, Mr. Duquette and Mr.
6 Czikmantori expanded the number of directors on New Century's Board to seven and
7 appointed six new directors. Of those six new directors, Defendants Pressman,
8 Koock, Goldberg and Henderson were appointed at the direction of Defendants
9 Kirkland and Arnold. The principals of ADI directed Defendants Kirkland and
10 Arnold to select those specific new Board members. Also appointed at that time
11 were Defendant Cabral and Randall Humphreys. After passing those resolutions,
12 Mr. Duquette remained the Company's CEO and kept this seat on the Board, while
13 Mr. Czikmantori remained Secretary but resigned his Board membership.

14 35. The newly expanded Board met a few days later and, upon information
15 and belief, passed a resolution providing the Board members with an option to
16 purchase one million shares of USAE common stock at \$0.13 a share. Half of those
17 options would vest one year from the resolution and the other half would vest a year
18 later. The Board gave an additional option to purchase 5 million shares to Summit
19 Trading, owned or controlled by Defendant Arnold,² in exchange for unspecified
20 "investor relations" services. The Board also established Defendant Kirkland and
21 his law firm, Defendant Luce, as outside counsel and, on or about April 19, 2010,
22 changed New Century's name to U.S. Aerospace, Inc.

23 36. Shortly thereafter, Defendant Kirkland spearheaded a transaction in
24 which the Company sought to purchase Antonov USA from ADI and TUSA

25 ² Summit Trading Limited is a Bahamian holding company and is owned by
26 the Weast Family Trust, a private irrevocable trust established for the benefit of
27 Defendant Arnold, Daisy Rodriguez, Stephanie Kaye and Tracia Fields. Defendant
28 Arnold is the settler of the Weast Family Trust, and his interest in Summit Trading
Limited is approximately 80% of the value.

1 Acquisition Corporation (“TUSA”). Defendant Arnold’s wife, Daisy Rodriguez, is
2 the President and stockholder of TUSA. The supposed purpose of the transaction
3 was for the Company to acquire Antonov USA’s sole asset, its purported existing
4 relationship with the Antonov Company, a Ukrainian state-owned company with the
5 capacity to undertake large aeronautical manufacturing projects.

6 37. On or about July 1, 2010, USAE purchased Antonov USA in exchange
7 for an aggregate of 383,793 shares of Series E Convertible Preferred Stock with a
8 par value of \$1.00. Two-thirds of that stock was paid to ADI. Under the governing
9 documents, the holders could convert each series E share into 500 shares of USAE
10 common stock. The Series E voted together with the common stock as a single class
11 on an as-converted basis, and the Series E benefitted from non-dilution protection.
12 Given the number of circulating common shares, after the purchase of Antonov
13 USA, the Series E holders, *i.e.*, ADI and TUSA, held the majority of voting shares
14 in USAE.

15 38. The same day as the Antonov USA purchase, USAE entered into a
16 Strategic Cooperation Agreement with the Antonov Company.

17 39. On July 6, 2010, the Company filed a report on Form 8-K with the SEC
18 concerning a press release issued that same day announcing the Company’s
19 “Strategic Cooperation Agreement” with Antonov to bid on a Request for Proposal
20 (“RFP”) from the U.S Air Force for the KC-Y Tanker Modernization Program. The
21 press release stated, in relevant part:

22 LOS ANGELES—(BUSINESS WIRE)—U.S. Aerospace, Inc.
23 (OTCBB: USAE), an aerospace and defense contractor, today
24 announced that it has entered into a Strategic cooperation agreement
25 with Antonov to bid on the request for proposal to supply 179 aerial
26 refueling tankers to the U.S. Air Force.

27
28 The airframes will be built in Ukraine by Antonov, with final assembly

1 at a new U.S. Aerospace, Inc. facility in the United States. The KC-X
2 Tanker Modernization Program, expected to be the largest contract in
3 Pentagon history, represents the first step of the strategic cooperation
4 between Antonov and U.S. Aerospace, Inc. to supply and service
5 aircraft to the U.S. military and commercial aircraft markets.

6 Antonov designed, built and operates the world's largest aircraft, the
7 AN-225, which provides strategic airlift capabilities for the U.S.
8 Department of Defense and others. Antonov and U.S. Aerospace, Inc.
9 will bid three models for the KC-X program, the AN-124-KC, AN-122-
10 KC, a twin-engine variant of the AN-124-100 with advanced engines,
11 electronics and avionics, and AN-112-KC, an updated airframe
12 designed specifically to meet the tanker program requirements.
13

14 "Antonov's participation in the U.S. Air Force tanker bid with U.S.
15 Aerospace, Inc. is an historic opportunity for Antonov to showcase its
16 premier design, engineering and manufacturing capabilities to the
17 world," said Dmytro S. Kiva, President and General Designer of
18 Antonov. "We are extremely pleased to have entered into this
19 agreement with U.S. Aerospace, Inc., and are looking forward to the
20 long-term mutual benefits of our partnership."

21 "We are honored to be partnering with the world's premier designer
22 and manufacturer of large transport aircraft," said Jerrold S. Pressman,
23 Chairman of U.S. Aerospace, Inc. "We are particularly impressed by
24 Mr. Kiva's strong leadership and vision for the future. Together we can
25 deliver the U.S. Air Force a superior tanker at the most competitive
26 price."
27

28 USAE, Current Report (Form 8-K), at Ex. 1 (July 6, 2010).

1 40. On or about July 9, 2010, USAE submitted a response to the RFP,
2 under which the aircraft components would have been built by Antonov Company in
3 the Ukraine, with final assembly by USAE. Since the U.S. Air Force denied the
4 Company's request for an extension of the bidding deadline on July 8, 2010, the
5 Company bid only one model of aircraft, the AN-112KC.

6 41. The Boeing Company and The European Aeronautic Defense and
7 Space Company N.V., also bid on the RFP utilizing existing wide body commercial
8 airliners as the basis for their KC-X tanker proposals. Both designs were advanced
9 and well developed, and both companies invested considerable resources into
10 designing their tankers and in preparing their responses to the RFP. Both companies
11 spent substantially more time, money and effort preparing their RFP responses than
12 USAE did.

13 42. Ultimately, the Air Force found USAE's bid untimely and failed to
14 consider it. On August 2, 2010, the Company submitted a bid protest to the General
15 Accounting Office ("GAO"). On October 6, 2010, the GAO denied the Company's
16 bid protest. USAE and the Antonov Company have yet to submit a successful bid
17 together, and, ultimately, the Company recorded an impairment charge equal to the
18 net book value of the Strategic Cooperation Agreement with Antonov.

19 43. On or about July 14, 2010, a company called Omnicom Holdings. Inc.
20 ("Omnicom") filed a complaint against USAE alleging that in June 2010, USAE
21 entered into an agreement with Omnicom to facilitate USAE's introduction to the
22 Antonov Company (the "Omnicom Complaint"). Allegedly, the terms of the
23 contract obligated USAE to pay a \$1.5 million fee due within forty-eight hours after
24 completion of a cooperation agreement between the Antonov Company and USAE,
25 and another \$1.5 million upon the consummation of a successful bid resulting from
26 that agreement. At the time, USAE had insufficient funds to pay that fee, and did
27 not anticipate obtaining such a significant sum anytime soon thereafter. Defendant
28 Kirkland was purported to have participated in negotiating the Omnicom agreement.

1 44. According to Omnicom's allegations, the contract was memorialized by
2 a single letter of acknowledgement, dated June 4, 2010, purportedly sent by
3 Omnicom CEO, Mark Suleymanov, to Board member Jerrold Pressman, who, upon
4 information and belief, was at the time and continues to be a client of Defendant
5 Kirkland on other unrelated matters. The Omnicom Complaint failed to allege any
6 specific actions taken by Omnicom in performance of the alleged contract with
7 USAE, much less explain why such actions constituted fair value for \$3 million.

8 45. Regardless, on July 15, 2010, *one day after the filing of the Omnicom*
9 *Complaint*, Defendant Kirkland and Defendant Pressman entered into a settlement
10 agreement with Omnicom on behalf of USAE. The settlement was a "pre-
11 packaged" transaction, agreed to even before the Complaint was filed, to facilitate
12 the issuance of free-trading shares. Under the terms of the settlement agreement,
13 *which did not include a release from all future claims*, Omnicom received 15
14 million free-trading shares of USAE common stock. At that time, 15 million shares
15 of USAE common stock held a value of approximately \$2.3 million. The Omnicom
16 settlement agreement was not submitted to the Company Board for approval before
17 it was executed.³

18 46. On or about August 11, 2010, USAE's Board of Directors post-hoc
19 ratified the Omnicom settlement agreement and Defendant Kirkland's role in
20

21 ³ The Company's Form 10-Q/A for the period ending June 30, 2010, dated
22 September 13, 2010, filed with the SEC discloses:

23 On August 20, 2010, we instructed our transfer agent to issue 5 million
24 shares and agreed to issue an additional 10 million shares to Omnicom
25 Holdings pursuant to a stipulated settlement in an action filed by
26 Omnicom for a \$1.5 million commission claimed due in connection
27 with our agreement with Antonov. The issuance was exempt from
28 registration pursuant to Section 3(a)(10) of the Securities Act as an
issuance approved by a court after a hearing upon the fairness of its
terms and conditions.

USAE, Quarterly Report (Form 10-Q/A), at F-22 (September 13, 2010).

1 approving the settlement. In that same resolution, the Board accepted Mr.
2 Duquette's resignation as CEO and as a Board member, effective August 16, 2010,
3 and appointed James Worsham to the Board and as the Company's new CEO,
4 effective September 29, 2010. Mr. Czikmantori also resigned as Secretary effective
5 August 16, 2010. Defendant Cabral was appointed President effective August 23,
6 2010.

7 47. Following the Omnicom settlement, 4.55 million shares of stock
8 initially issued to Omnicom were then reissued to a number of other entities,
9 including Zynatech, Aegis Capital, Adanta Partners, Omnivest Holdings, Net Gen,
10 Oceanic Consulting, Insight Capital Consultants and James Meagher at the direction
11 of Tom Biggs and Dick Fixaris, employees of Defendant Arnold. At least one of
12 those companies had a pre-existing relationship with USAE.

13 48. The Company's report on Form 10-Q for the period ending September
14 30, 2010 reported,

15 Operating loss for the three and nine months ended September 30,
16 2010, was \$12,156,947 and \$14,235,297 compared to \$66,166 and
17 \$108,525 for the three and nine months ended September 30, 2009. ***The***
18 ***increase in loss of \$12,090,781 and \$14,126,772, respectively, is***
19 ***primarily due to the impairment charge for the Strategic Cooperation***
20 ***Agreement***, the acquisition of PAI, the reclassification of NCR as a
21 discontinued operation ***and due to increased consulting services for***
22 ***new aerospace marketing and service contracts.***

23 USAE, Quarterly Report (Form 10-Q), at *4 (December 16, 2010) (emphasis
24 added). The 10-Q goes on to report that \$11,513,790 of this loss for the nine
25 months ended September 30, 2010 was due to a "non-cash expense for impairment
26 of an intangible asset", that \$319,319 of the loss was from "stock issued for
27 services," and another \$1,500,000 of the loss was due to "stock issued for the
28 settlement of a liability...."

1 49. By December 2010, USAE required further financing to remain a going
2 concern. The sole potential funding offer to USAE came from the same New York-
3 based asset management firm that had extended credit, as discussed above. The
4 tentative proposed terms were beneficial to the Company, but required the Company
5 to terminate the rights of the Series E holders in order to encourage further
6 investment by market participants who otherwise would shy away from a company
7 controlled by the Series E holders.

8 50. When informed of the proposed lender's terms, Defendant Kirkland
9 unilaterally rejected the proposed funding on behalf of the Company. Further,
10 Defendant Kirkland asserted that he would prefer placing the Company into
11 bankruptcy rather than accept the funding under the premise that the Series E
12 holders could emerge from the proceedings owning a shell company containing the
13 necessary licenses to enter into government contracts as well as the cooperation
14 agreement with the Antonov Company.

15 51. Defendant Kirkland attempted to effect this purported rejection without
16 consulting with the Board or the Company's CEO, Mr. Worsham. The Company's
17 financial situation has become increasingly precarious. Evidently, Defendant
18 Kirkland and the Series E holders are in fact resigned to placing the Company in
19 bankruptcy. Mr. Worsham and the Company, however, believe that with financing,
20 USAE can avoid bankruptcy, become profitable, and protect the interests of the
21 common shareholders and USAE's creditors.

22 52. On January 27, 2011, Mr. Worsham was removed, without cause, from
23 USAE's Board.

24 53. On January 28, 2011, the Company filed form 15-12G with the SEC to
25 deregister its stock. It reported a net loss for the quarter ended September 30, 2010,
26 of \$11.5 million on revenue of \$660,144.

27 54. By the actions alleged herein, Defendant Kirkland and, vicariously,
28 Defendant Luce violated their professional responsibilities and fiduciary duties

1 owed to USAE as USAE's outside general counsel. Defendant Kirkland has
2 consistently placed his own interests and the objectives of other individuals before
3 those of his client and acted well beyond the scope of his authority. Defendant
4 Kirkland also violated his fiduciary duties of loyalty, good faith and care to the
5 Company and aided and abetted similar breaches of duty by the Director Defendants
6 and the Majority Shareholders.

7 55. The Director Defendants have similarly breached their fiduciary duties
8 of care and loyalty and have aided and abetted Defendants Kirkland and Luce's
9 breaches of fiduciary duty. The Director Defendants have abdicated their
10 responsibility to adequately monitor USAE's business dealings and oversee
11 Defendants Kirkland and Luce.

12 56. Further, the Majority Shareholders, ADI and TUSA, which control a
13 majority of the USAE Board, have breached and continue to breach their fiduciary
14 duties owed to the Company and the minority shareholders by insisting that the
15 Company be placed into bankruptcy rather than accept financing which could allow
16 the Company to become profitable and protect the interests of the common
17 shareholders and USAE's creditors.

18 57. Defendant Arnold has aided and abetted each of the foregoing breaches
19 of fiduciary duty by Defendants Kirkland and Luce, the Director Defendants and the
20 Majority Shareholder Defendants.

21 **V. DERIVATIVE ACTION AND DEMAND EXCUSED ALLEGATIONS**

22 58. Plaintiffs bring this action derivatively, in the right and for the benefit
23 of the Company, to redress Defendants' breaches of fiduciary duties, and
24 Defendants Kirkland and Luce's legal malpractice.

25 59. Plaintiffs are owners of USAE common stock and were owners of
26 USAE common stock at all relevant times hereto.

27 60. Plaintiffs will adequately and fairly represent the interests of the
28 Company and its shareholders in enforcing and prosecuting its rights.

61. As a result of the facts set forth herein, Plaintiffs have not made any demand on the Board to institute this action against Defendants. Such demand would be a futile and useless act because a majority of the members of the Board are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

62. Upon information and belief, at this time the Board consists of the five Director Defendants: Cabral, Goldberg, Henderson, Koock and Pressman. Defendants Goldberg, Henderson, Koock and Pressman were each hand-picked by Defendant Kirkland at the direction of Defendant ADI, a majority shareholder of the Company. Defendant ADI owns two-thirds of the Series E Convertible Preferred Stock of the Company. Together with TUSA, ADI owns a majority of the voting shares in USAE. Therefore, a majority of the Board is conflicted and entangled with and controlled and dominated by Defendants Kirkland, Luce and ADI, preventing them from fairly considering, let alone taking, all necessary and proper action on the Company's behalf.

63. Demand is also excused because the underlying transactions complained of herein were not and could not have been the product of a valid exercise of business judgment.

64. Demand is also excused because the wrongs alleged herein constitute violations of the fiduciary duties owed by the Director Defendants and are incapable of ratification by the current Board. The Director Defendants are subject to liability for breaching their fiduciary duties to USAE and aiding and abetting breaches of fiduciary duty by the other defendants by, *inter alia*, failing to adequately monitor USAE's business dealings and oversee Defendants Kirkland and Luce.

COUNT I

Against Defendants Kirkland and Luce for Legal Malpractice

65. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.

1 66. By accepting his position as USAE's outside general counsel,
2 Defendant Kirkland obligated himself to "conform his ... representation to the
3 concept that the client is the organization itself, acting through its highest authorized
4 officer, employee, body, or constituent overseeing the particular engagement." Cal.
5 Rules Prof'l Conduct R. 3-600; *see also* Model Rules Prof'l Conduct R. 1.2 ("[A]
6 lawyer shall abide by a client's decisions concerning the objectives of representation
7 and, as required by Rule 1.4, shall consult with the client as to the means by which
8 they are to be pursued.") Defendant Kirkland, however, consistently placed the
9 objectives of the Series E holders, *i.e.*, ADI, TUSA and their affiliates, before the
10 well-being of the Company, in violation of his ethical duties.

11 67. Defendant Kirkland's continued representation and/or affiliation with
12 ADI and its interests constituted conflicts which should have precluded him from
13 representing the Company. Defendant Kirkland cannot ethically allow his
14 representation of the Company to be directed by a client with adverse interests.
15 Defendant Kirkland's loyalty to the Series E holders rather than to the Company has
16 caused, and continues to cause, USAE significant material harm. For example,
17 Defendant Kirkland, acting at the behest of ADI, prevented the Company from
18 considering essential funding offered by Centrecourt because its terms included the
19 limitation of the Series E stock. Defendant Kirkland's preference for placing the
20 Company into bankruptcy under the theory that the Series E holders would emerge
21 as the owners of important USAE assets further underscores this conflict.

22 68. The California Bar Association, of which Defendant Kirkland is a
23 member, proscribes the continued representation of a client in the face of such a
24 conflict. *See* Cal. Rules of Prof'l Conduct, Rule 3-310(C) ("A member shall not,
25 without the informed written consent of each client: (1) Accept representation of
26 more than one client in a matter in which the interests of the clients potentially
27 conflict; or (2) Accept or continue representation of more than one client in a matter
28 in which the interests of the clients actually conflict...."). Defendant Kirkland never

1 provided the Company with notice of his existing conflict. Even so, such notice and
2 consent could not absolve Defendant Kirkland of his ethical duty to pursue his
3 client's objectives rather than those of another.

4 69. Defendant Kirkland similarly violated California Rules of Professional
5 Conduct, Rule 3-310(B), which states that "[a] member [of the Bar] shall not accept
6 or continue representation of a client without providing written disclosure to the
7 client where: . . . (3) [t]he member has or had a legal, business, financial,
8 professional, or personal relationship with another person or entity the member
9 knows or reasonably should know would be affected substantially by resolution of
10 the matter; or (4) [t]he member has or had a legal, business, financial, or
11 professional interest in the subject matter of the representation." *See also* Model
12 Rules of Prof'l Conduct R. 1.7 ("a lawyer shall not represent a client if the
13 representation involves a concurrent conflict of interest"). Defendant Kirkland
14 never attempted to provide such disclosure to the Company, which in any event
15 would have been inadequate.

16 70. Defendant Kirkland's professional relationship with ADI obligated him
17 to discontinue his representation of the Company. Under California Rules of
18 Professional Conduct, Rule 3-300, "[a] member shall not enter into a business
19 transaction with a client; or knowingly acquire an ownership, possessory, security,
20 or other pecuniary interest adverse to a client...."

21 71. The California Rules of Professional Conduct prohibited Defendant
22 Kirkland from participating in USAE's purchase of Antonov USA. In that
23 transaction, Defendant Kirkland did disclose his conflict to the Board, which
24 purported to waive any such conflict on behalf of the Company. However, even if
25 the Board were empowered to waive a conflict regarding the Company's counsel,
26 the majority of the Board members were appointed by ADI and therefore were
27 hopelessly conflicted in the transaction. The interested directors should have
28 recused themselves from participating in the vote. Moreover, the purchase involved

1 the effective sale of control over the Company to another of Defendant Kirkland's
2 clients and/or related parties. Defendant Kirkland therefore should not have asked
3 for, or accepted, a waiver concerning such a clear conflict. Instead, he should have
4 advised his client to obtain separate counsel to explore whether the transaction
5 benefitted the Company and its shareholders, or just ADI and the ADI-appointed
6 Board members.

7 72. Defendant Kirkland also breached his ethical duties by failing to
8 consult or take direction from his client on important matters. Defendant Kirkland
9 adopted a role beyond that of outside general counsel by immersing himself in the
10 day-to-day management of the Company at ADI's behest. In the context of the
11 funding offer, it was beyond Defendant Kirkland's duties as general counsel to take
12 action without direction from the Company through its highest authorized officer,
13 James Worsham. *See* Cal. Rules of Prof'l Conduct, Rule 3-600. After receiving
14 such direction, Mr. Kirkland should have vigorously defended USAE's position,
15 whether or not he agreed with it, rather than promoting the position of the Series E
16 holders.

17 73. Defendant Kirkland also violated his ethical duties by failing to inform
18 the Company about the Omnicom settlement offer, let alone seek direction regarding
19 whether the offer was sufficiently advantageous. *See* Cal. Rules of Prof'l Conduct,
20 Rule 3-510.

21 COUNT II

22 **Against Defendants Kirkland and Luce, the Director Defendants and the** 23 **Majority Shareholder Defendants for Breach of Fiduciary Duty and Aiding** 24 **and Abetting; and Against Defendant Arnold for Aiding and Abetting**

25 74. Plaintiffs reallege the foregoing paragraphs as though fully set forth
26 herein.

27 75. Defendants agreed to and did participate with and/or aided and abetted
28 one another in a deliberate course of action designed to divert corporate assets in
breach of fiduciary duties they owed to the Company.

1 76. Defendants have violated fiduciary duties of care, loyalty, good faith,
2 and independence owed to USAE and its public shareholders, have engaged in
3 unlawful self-dealing and have acted to put their personal interest and/or their
4 colleagues' interests ahead of the interests of USAE and its shareholders.

5 77. Defendants Kirkland and Luce owed a fiduciary duty to USAE
6 stemming from Defendant Kirkland's position as outside general counsel and from
7 his activities in managing the Company's operations. Defendant Kirkland assumed
8 an affirmative duty to protect the interest of the Corporation, but also an obligation
9 to refrain from conduct which would injure the corporation and its stockholders or
10 deprive them of profit or advantage.

11 78. The Director Defendants at all relevant times owed a duty of loyalty to
12 USAE and its shareholders, including a duty to be independent and motivated by
13 neither self-interest nor ill will. The Director Defendants breached this duty.

14 79. The Director Defendants at all times placed their own interests and
15 interests of outside parties before the interests of USAE and its shareholders. The
16 Director Defendants approved and/or ratified the transactions that resulted in the
17 transfer of significant numbers of shares to the Majority Shareholder Defendants for
18 inadequate consideration to USAE.

19 80. The Director Defendants gave Summit Trading, a company controlled
20 by Defendant Arnold, an option to purchase 5 million shares of USAE for no
21 consideration to USAE.

22 81. The Director Defendants approved and/or ratified the sham settlement
23 with Omnicom that resulted in millions of shares of USAE being transferred to
24 outside parties for no consideration to USAE.

25 82. The Director Defendants approved and/or ratified Defendant Kirkland's
26 decision to reject crucial financing needed to keep USAE a going concern, thereby
27 approving and/or ratifying, or taking no action to prevent actions that placed USAE
28 in imminent danger of insolvency.

1 83. The Majority Shareholder Defendants at all times placed their own
2 interests and interests of outside parties before the interests of the minority
3 shareholders.

4 84. Defendant Arnold aided and abetted the foregoing breaches of fiduciary
5 duties. Defendant Arnold had actual knowledge of all of Defendant Kirkland's and
6 the Director Defendant's breaches of fiduciary duty. Defendant Arnold, along with
7 Defendant Kirkland, misrepresented to the Company that Defendants Arnold and
8 Kirkland owned certain USAE debt which was actually owed by Centrecourt.

9 85. Defendant Arnold, along with Defendant Kirkland and at the behest of
10 ADI, directed the Company to expand the Board and to appoint four of the Director
11 Defendants to the USAE Board. The Director Defendants installed by Defendant
12 Arnold then granted Defendant Arnold's company, Summit Trading, an option to
13 purchase 5 million shares of USAE for no consideration.

14 86. Defendant Arnold also assisted in engineering a transaction in which
15 USAE purchased Antonov USA from ADI and TUSA, resulting in ADI and TUSA
16 owning the majority of the voting shares in USAE. Defendant Arnold's wife is the
17 President of TUSA. Defendant Arnold knew that Defendant Kirkland was placing
18 his interests and those of the Majority Shareholder Defendants above those of USAE
19 and its common shareholders and knew that USAE was to receive inadequate
20 consideration for the transaction.

21 87. Finally, Defendant Arnold had actual knowledge that Defendant
22 Kirkland and Defendant Pressman engineered the sham settlement with Omnicom.
23 Defendant Arnold directed his employees to re-issue a substantial portion of the
24 stock issued to Omnicom to a series of other entities.

25 88. As a proximate result of Defendants' conduct, USAE has been injured
26 and is entitled to damages.

27
28

COUNT III

**Against Defendants Kirkland and Luce and the Director Defendants for
Corporate Waste**

89. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.

90. Corporate waste is defined as an exchange of corporate assets for consideration so disproportionately small as to lie beyond the range at which any reasonable person might be willing to trade.

91. There was no substantial consideration received by the Company in exchange for the Series E Convertible Preferred Stock issued to ADI and TUSA.

92. There was no substantial consideration received by the Company in exchange for the shares issued to Omnicom in connection with the Omnicom settlement.

93. There was no substantial consideration received by the Company in exchange for the option to purchase 5 million shares of USAE granted to Summit Trading, a company controlled by Defendant Arnold.

94. Under the circumstances, no reasonable business person could conclude that the aforementioned transactions were worthwhile for the Company and in the Company's best interests.

95. Defendants Kirkland and Luce and the Director Defendants are therefore guilty of committing corporate waste and are liable to the Company for all damages sustained thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Against all of the Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' misconduct;

B. Granting appropriate equitable relief to remedy Defendants' breaches of fiduciary duties;

1 C. Awarding to Plaintiffs, the costs and disbursements of the action,
2 including reasonable attorneys' fees, experts' fees, costs, and expenses; and

3 D. Granting such other and further relief as the Court deems just and
4 proper.

5 **JURY TRIAL DEMAND**

6 Plaintiffs demand a trial by jury.

7 DATED: May 18, 2011

8 WOLF HALDENSTEIN ADLER
9 FREEMAN & HERZ LLP
Francis M. Gregorek
Betsy C. Manifold
Rachele R. Rickert
10 Patrick H. Moran

11 
12 Rachele R. Rickert

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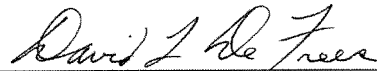
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1 VERIFICATION

2 I, David L. Defrees, am a party to this action. I hereby verify that I have read
3 the foregoing Verified Derivative Complaint, know its contents and authorized its
4 filing. The matters stated in the Verified Derivative Complaint are true based on my
5 own knowledge, except as to those matters stated on information and belief, and as
6 to those matters I believe them to be true.

7 I verify under penalty of perjury that the foregoing is true and correct.

8
9
10 DATE: May 13, 2011



DAVID L. DEFREES

VERIFICATION

I, Simon Gershon, am a party to this action. I hereby verify that I have read the foregoing Verified Derivative Complaint, know its contents and authorized its filing. The matters stated in the Verified Derivative Complaint are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: May 15, 2011



SIMON GERSHON

VERIFICATION

I, Frederick Rich, am a party to this action. I hereby verify that I have read the foregoing Verified Derivative Complaint, know its contents and authorized its filing. The matters stated in the Verified Derivative Complaint are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: May 17, 2011


FREDERICK RICH